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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

NO. 568

UNITED STATES OF AMERICA, Appellant,

v.

SWIFT & COMPANY, ET AL., Appellees.

NO. 569

AMERICAN WHOLESALE GROCERS ASSOCIATION, ET AL., Appellants,

v.

SWIFT & COMPANY, ET AL., Appellees.

NO. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION, Appellant,

v.

SWIFT & COMPANY, ET AL., Appellees.

REPLY BRIEF FOR AMERICAN WHOLESALE GROCERS ASSOCIATION, ET AL., APPELLANTS IN NO. 569.

BY
EDGAR WATKINS, Counsel.
Address: Citizens & Southern National Bank Building, Atlanta, Georgia.

MAC ASBILL,
EDGAR WATKINS, JR.,
Of Counsel.

10277 STEIN PRINTING CO., ATLANTA, GA.

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SWIFT & COMPANY, ET AL., Appellees.

REPLY BRIEF FOR AMERICAN WHOLESALE GROCERS ASSOCIATION, ET AL., APPELLANTS NO. 569.

Appellants in Docket 569 in reply to the brief of Appellees submit this memorandum.

ERROR IN APPELLEES' BRIEF.

At page 8 of their brief Appellees say:

> "* * * interveners did not call a single witness, or even prove that any member of either of their organizations has an existing business that will be affected in any way by modification of the decree."

A similar statement appears at the bottom of page 42 of Appellees' brief.

The facts are that J. M. Radford Grocery Company is an intervener (R. 175) and that it was stipulated that J. M. Radford of that company, among other wholesale grocers would testify:

> "* * * in substance, that in their opinion their business and their industry and that of their retail customers would be seriously endangered and injured if the petitioning defendants, Swift and Armour, were permitted to reenter and to engage in the manufacture or packing of or were permitted to sell or handle or use their distributive facilities in the handling of the grocery commodities now prohibited to them by the terms of the said Decree of February 27, 1920:" (R. 722.)

With this stipulation it was useless to call any witness to show that Interveners have "an existing business that will be affected in any way by modification of the decree."

Appellees Claim That Consent of the Government Gave Power to Modify the Final Decree.

In our original brief it was contended that the District Court had no jurisdiction to modify the decree of 1920. Appellees (Brief 34 ff.) urge that Interveners, in view of the action of the Government in this respect, have no right to make such contention.

We submit that the jurisdiction of the Court below is involved. Compare Realty Acceptance Corp. v. Montgomery, decided February 15, 1932, L.Ed. Ad. Pamphlet 315.

In United States v. Mayer, 235 U. S. 55, 70, this Court, citing cases, said:

> "As the district court was without power to entertain the application, the consent of the United States attorney was unavailing. * * * * * In a Federal court of competent jurisdiction, final judgment of conviction had been entered and sentence had been imposed. The judgment was subject to review in the appellate court, but, so far as the trial court was concerned, it was a finality; the subsequent proceeding was, in effect, a new proceeding, which by reason of its character, invoked an authority not possessed. In these circumstances it would seem to be clear that the consent of the prosecuting officer could not alter the case; he was not a dispensing power to give or withhold jurisdiction. The established rule embodies the policy of the law that litigation be finally terminated, and when the matter is thus placed beyond the discretion of the court, it is not confided to the discretion of the prosecutor."

Respectfully submitted,

EDGAR WATKINS,

Counsel for American Wholesale Grocers Association, et al., Appellants in No. 569.
Address: 1025 Citizens & Southern National Bank Building, Atlanta, Georgia.

MAC ASBILL,

EDGAR WATKINS, JR.,

Of Counsel.